

**THE AMERICAN COMMISSIONER
MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY**

DECISION NO. 2

IN THE MATTER OF

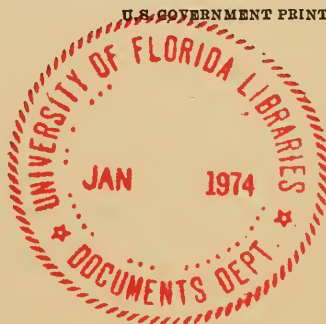
FIXING REASONABLE FEES FOR ATTORNEYS OR
AGENTS UNDER THE AUTHORITY OF SECTION 9 OF
THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

DOCKET NO. 273

*Bertha V. Trumbull, Priscilla Trumbull Gill, Claimants
Edward K. Nicholson, Attorney*

CHANDLER P. ANDERSON,
American Commissioner

U.S. GOVERNMENT PRINTING OFFICE: 1923



MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON
American Commissioner

(II)

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Bertha V. Trumbull, Priscilla Trumbull Gill, Claimants

Edward K. Nicholson, Attorney

The above named claimants have duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by each of them to their attorney, Edward K. Nicholson, of Bridgeport, Connecticut, as compensation for whatever services have been rendered by the said attorney on behalf of and with the authority of the said claimants, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928".

The claimants have objected to the amount of the fee asked by the attorney on the ground that it is excessive, and the attorney has been notified of the filing by the claimants of this request that a reasonable fee be fixed, and the attorney, in response to a request by the American Commissioner, has filed with him an affidavit, giving the information which the attorney desires to have considered by the Commissioner as showing the reasonableness of the fee asked, which

information has been brought to the attention of the claimants, and the claimant Priscilla Trumbull Gill has filed a written reply thereto, a copy of which has been transmitted to the attorney.

The amount of the fee asked by the attorney as compensation for his services in this matter is fifteen per cent of the amount of the awards rendered by this Commission on account of the death, through the sinking of the "Lusitania", of the late Isaac B. Trumbull, the husband and father of the claimants, respectively, which awards are for \$50,000 to the widow, and \$25,000 to the daughter, with interest thereon at the rate of five per cent from November 1, 1923, until paid, fifteen per cent of which awards as computed by the attorney amounts to approximately \$9,213.54 as to the widow's award, and \$4,606.77 as to the daughter's award, the total fee asked by the attorney amounting, accordingly, to \$13,820.31.

As to the authority of the attorney to act as the attorney for these claimants, the record raises an interesting question as to the date and terms of his employment as their attorney.

The attorney states in his affidavit filed in this proceeding that "no written authorization of any kind was ever given, although each step taken was under the authorization of the said Alexander H. Trumbull [the Administrator of the Estate of Isaac B. Trumbull] and with the knowledge of the said Bertha V. Trumbull and the said Priscilla Trumbull", and, further, "no agreement was ever made by me with either Alexander H. Trumbull, Bertha V. Trumbull, nor Priscilla Trumbull, as to the amount of compensation to be paid".

Whatever authority the said attorney had to act as the attorney for these claimants is disclosed and defined by the following facts:

The late Isaac B. Trumbull, the husband and father of the respective claimants, was the Treasurer of the Connecticut Electric Manufacturing Company of Bridgeport, and also of the Trumbull Motor Car Company of Bridgeport, up to the time of his death, which companies had been represented by the said attorney as General Counsel for several years prior thereto. Mr. Alexander H. Trumbull, the brother of the late Isaac B. Trumbull, was the president of the Connecticut Electric Manufacturing Company, and upon the death of his brother sent for the said attorney and arranged to have him make application for the appointment of the said Alexander H.

Trumbull as the Administrator of the Estate of his brother, which was done.

In connection with the settlement of the said Estate, the question arose as to the claim arising out of the death of Isaac B. Trumbull, and the attorney was instructed by the said Administrator "to take all necessary steps to recover any possible damages arising from the drowning of the said Isaac B. Trumbull".

In February, 1916, a claim was filed with the Secretary of State, setting forth the facts on which it was based, in accordance with a circular notice issued by the Department of State.

This claim apparently was presented on behalf of the widow and daughter of the late Isaac B. Trumbull for their proportionate share of the amount of any indemnity paid by the German Government because of the destruction of lives on the "Lusitania". At that time there was some expectation that Germany would pay to the United States Government a lump sum as indemnity for the damages resulting from the sinking of the "Lusitania", to be distributed by the United States Government among those entitled to participation. This was not the claim subsequently presented to the Mixed Claims Commission on which its awards were made to these claimants.

This claim was presented in the form of an affidavit, which is now in the files of this Commission, sworn to by Bertha V. Trumbull on January 27, 1916, before Edward K. Nicholson, notary public. In taking this affidavit, the said notary public, in compliance with the Regulations of the Department of State, governing the presentation of international claims, certified over his signature and seal that "I am neither the agent nor attorney of the said Bertha V. Trumbull or the said Priscilla Trumbull, nor of any other person who might or may have any interest in the same".

The name of the notary being the same as that of the attorney in this case, this certificate has been called to his attention by the American Commissioner, and he has admitted that he was the notary public who certified as aforesaid in the verification of said affidavit.

In August of the same year, 1916, the attorney went to New York on this matter and consulted with a firm of lawyers there with reference to the participation of these claimants in some contemplated litigation brought against the Cunard Steamship Company, but no

agreement was ever entered into with them nor was anything ever done by them for these claimants.'

In December, 1918, the attorney consulted a Washington lawyer, who advised him to file the claim in the name of the Administrator. The attorney accordingly wrote to him, giving him full information, but whether or not the claim was ever filed he does not know. In January of the following year, 1919, the attorney had some correspondence with another Washington lawyer in regard to the preparation and presentation of this claim, but nothing was done with him about this.

On May 21, 1920, the Department of State wrote to the attorney with reference to the claim filed by Mrs. Bertha V. Trumbull, as aforesaid, in 1916, inclosing the Department's regulation printed forms to be filled out, and calling for certain documentary evidence to be filed, which forms were completed and filed, and the evidence requested supplied by this attorney.

In November, 1922, the Department notified the attorney of the signing of the agreement with the German Government for the establishment of the Mixed Claims Commission between the United States and Germany, and indicated the requirements for the petition to be presented to that Commission. The attorney adds that a duplicate of this letter was sent to Mrs. Bertha V. Trumbull, who delivered it to him. On December 30, 1922, the attorney filed with the Secretary of State an application for the support of the claims of Bertha V. Trumbull and Priscilla E. Trumbull, accompanied by their birth certificates showing their American nationality, and a certificate of the appointment of Bertha V. Trumbull as guardian for Priscilla E. Trumbull, the proceedings for which had been taken by this attorney, together with a statement of the earning capacity of the late Isaac B. Trumbull and his birth certificate showing his American nationality, together with an affidavit of Alexander H. Trumbull of his appointment as Administrator of the Estate of Isaac B. Trumbull, and a certified copy of his appointment as such Administrator. At the same time the attorney filed a similar application by Bertha V. Trumbull as guardian of Priscilla E. Trumbull asking for the support by the State Department of the presentation of her claim. The records of this Commission show that the attorney also filed at the same time, although he does not mention it in his affidavit, a similar

application by Alexander H. Trumbull as Administrator of the Estate of Isaac B. Trumbull presenting this claim on behalf of that estate.

All of these applications were filed on printed forms supplied by the Department of State, with blanks to be filled out by the claimants in accordance with the detailed instructions contained in these forms.

These three forms were signed and sworn to by the respective claimants, and in each case the verification by the claimant was made before Edward K. Nicholson, notary public, who in each case certified over his signature and seal, as required by the Regulations of the Department of State, that "I am not the agent or attorney of any person having an interest in such claim." These certificates, as in the case of the similar certificate in the affidavit of January, 1916, have been called to the attention of the attorney, and he admits that here again he was the notary public who signed these certificates certifying that he was not the agent or attorney of any person having an interest in these claims.

It is evident from the foregoing that the relationship of attorney and client had not arisen between this attorney and these claimants up to the date of these affidavits, December 29, 1922, and, accordingly, that he is not entitled to have included in the services for which he is now asking compensation as the attorney or agent for these claimants any services rendered by him on their behalf prior to that date.

Under the rulings made by this Commission (See "Opinion in the Lusitania Cases" announced November 1, 1923), the Estate of the late Isaac B. Trumbull had no claim against Germany under the Treaty of Berlin on account of his death, and has no interest in the awards made by this Commission in favor of the widow and daughter of the late Isaac B. Trumbull. The American Commissioner accordingly is not concerned with any services rendered by this attorney for the Administrator of that Estate, and cannot take such services into consideration in fixing his fee for services rendered on behalf of the claimants herein.

The claimant Priscilla Trumbull Gill, in her letter filed in reply to the attorney's affidavit in this proceeding, states that so far as she knows the attorney's affidavit is correct, "although neither Mrs. Ber-

tha V. Trumbull nor myself have ever had direct dealings with Mr. Nicholson, such dealings having been made through Mr. Alexander H. Trumbull, Administrator of the late Isaac B. Trumbull's Estate ", She adds, "Mr. Nicholson advised us through Mr. Alexander Trumbull that he considered fifteen per cent of the amount of the award a reasonable fee. We informed Mr. Nicholson that he would receive his fee as soon as the Mixed Claims Commission had determined what that fee should be. Two days after Mr. Nicholson made his demand for payment, papers were served on Mrs. Bertha V. Trumbull and myself, attaching our home and informing us that we were being sued by Mr. Nicholson for twenty-five thousand dollars for unpaid services ".

It is evident from the facts disclosed by the record in this case that the claimants never directly authorized this attorney to act for them in the prosecution of this claim, and that the only direct authorization he ever received in connection with the matter was the oral instruction given him by Alexander H. Trumbull, the Administrator of the Estate of Isaac B. Trumbull, who was the President of the company for which this attorney was General Counsel, and of which the deceased was the Treasurer, which instruction was "to take all necessary steps to recover any possible damages arising from the drowning of said Isaac B. Trumbull". Nevertheless, it appears that these claimants have been kept informed of the steps taken by the said attorney in the proceedings before this Commission since their claim was filed with this Commission in December, 1922, and inasmuch as they have sanctioned his action as their attorney by acquiescence therein and by their acceptance of the benefits arising therefrom, he is entitled to compensation for the services thus rendered on their behalf.

Although the record shows that no written contingent fee agreement was entered into between the claimants and the attorney, the Commissioner is of the opinion that the circumstances of the case and the attorney's professional relationship of general counsel to the company, of which the decedent was formerly the Treasurer and the decedent's Administrator and brother is the President, justify a finding that his services were rendered to the claimants on the tacit understanding that compensation therefor was contingent upon the allowance of the claim and was to be paid out of the proceeds of the

award. On this basis, as stated in the Administrative and Jurisdictional Decision of September 28, 1928, in these proceedings, the attorney is justified in charging a somewhat larger fee than would be charged for the same services merely on the quantum meruit basis.

It remains to consider what services were rendered by this attorney subsequent to December 29, 1922, of the character defined in Section 9 of the Act under consideration, for which he is entitled to ask compensation from these claimants.

Evidently the proof originally submitted in support of this claim was considered inadequate by the Agent of the United States before this Commission because, as appears from the attorney's affidavit and from the records of the Commission, the American Agency wrote to him on June 14, and August 27, 1923, asking for further evidence proving the American nationality of Isaac B. Trumbull and of the claimant at the time of his death, and also proving that he sailed on the "Lusitania" and lost his life through her destruction; also proving his earning capacity and physical condition at the time of his death, and the amount contributed by him to the support of the claimants, as well as the amount of life and accident insurance carried by him, with the names of the beneficiaries thereof. The attorney states that the information requested was furnished by him in affidavits prepared and secured by him from persons having knowledge of the facts.

It is also stated by the attorney in his affidavit that "no further information was ever asked by the Department".

It further appears from the attorney's affidavit that during the summer of 1926 he conferred with two members of Congress from Connecticut as to the possibility of expediting the payment of the awards.

The only further service rendered by him as stated in his affidavit was to fill in the blanks in the printed form of application issued by the Treasury Department to be filed by claimants for the payment of the awards. This service, as appears from the forms filed, consisted of filling in the docket number of the claim, the name of the claimant, an affirmative or negative answer as to whether any part of the award had been paid through other channels, and whether the claimant was entitled to a share in any other awards, and, finally, the address to which the check in payment of the award was to be

mailed, all of which is the subject of detailed instructions printed in the application form.

The said attorney further states that he has carried on a large amount of correspondence and has had many conferences with Mr. Alexander H. Trumbull, the Administrator as aforesaid, and others, "all of which", he says, "are too numerous to detail", and it does not appear what bearing or value they had in relation to the prosecution of the particular claims under consideration.

It further appears from the records of this Commission that in the proceedings before this Commission this attorney has not filed any brief with the American Agency as to the basis upon which damages should be awarded by this Commission under the Treaty of Berlin in death cases resulting from the sinking of the "Lusitania". No brief on any other question of law or fact involved in these claims was submitted by the attorney.

As to disbursements and expenses incurred by the attorney on account of these claims, he states in his affidavit that he had kept no record of them, and he makes no separate claim for them on the understanding that they would be covered by his fee for services. It is a very general understanding and practice of the legal profession that the ordinary expenses of maintaining an office are covered by legal service charges, and that a separate charge is not made for them. This attorney seems to recognize this in his further statement that "naturally, clerical assistance has been taken care of by my secretary and stenographers in the ordinary course of business, and no charge has been made therefor".

The fact that the attorney makes no claim for disbursements and expenses in addition to his fee for services is given due weight by the American Commissioner in fixing a reasonable fee for his services.

Now, therefore, in the circumstances above set forth, and in view of the considerations stated in the general Jurisdictional and Administrative Decision rendered by the American Commissioner under date of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorney aforesaid and by the claimants, and of the information pertinent to the questions involved in this case on file in the records of this Commission, and after due deliberation thereon,

The American Commissioner decides and fixes the amount of three thousand two hundred dollars (\$3,200) as the reasonable fee to be paid by the claimant Bertha V. Trumbull, and the amount of one thousand six hundred dollars (\$1,600) as the reasonable fee to be paid by the claimant Priscilla Trumbull Gill, to the said attorney, Edward K. Nicholson, in full compensation for all services rendered by him as aforesaid, as defined in Section 9 of the "Settlement of War Claims Act of 1928".

Done at Washington, D. C., this 22nd day of October, 1928.

CHANDLER P. ANDERSON,

American Commissioner,

Mixed Claims Commission,

United States and Germany.

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UNIVERSITY OF FLORIDA



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